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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/736,232	12/14/2000	Scott A. Sirrine	65856-0025	9140

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EXAMINER	
DAY, HERNG DER	

ART UNIT	PAPER NUMBER
2128	

MAIL DATE	DELIVERY MODE
06/05/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 09/736,232	**Applicant(s)** SIRRINE, SCOTT A.	
	Examiner Herng-der Day	**Art Unit** 2128	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 May 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1-7 and 9-21*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: Arguments regarding Inertia vs. Torque and art rejections are not persuasive.

1. Regarding Inertia vs. Torque, Applicant argues, "The Examiner's rejections rely upon the assertion that "the disclosed driveline inertia in the instant application represents a torque". (Final Office Action mailed March 16, 2007, page 14, line 4). However, torque (a vector) is a measure of angular force, whereas inertia is, generally, the tendency of an object to stay in motion (resistance to changes in momentum). Therefore, an item at rest can have a magnitude of inertia (measured in ft lb-mass) and zero torque (measured m ft lb-force)." However, based on the equations (1) – (9) in the specification, when at rest, i.e., RPM=0, not only the acceleration becomes zero but also the so-called inertia becomes zero. In other words, following Applicant's above argument, the disclosed driveline inertia in this instant application, as a matter of fact, represents a torque.

2. Regarding art rejections and motivation, Applicant's arguments are based on the assertion that the disclosed and claimed driveline inertia in this instant application represents a true inertia but not a torque. However, as discussed above, based on the equations (1) – (9) in the specification and Applicant's assertion regarding Inertia vs. Torque, the claimed driveline inertia in this instant application, as a matter of fact, represents a torque. Accordingly, Creger's torque anticipates the claimed "driveline inertia".

3. Regarding Error within Creger, Applicant argues, "Creger states that torsional acceleration is "the second derivative of speed." (Creger, Column 5, lines 62-65) However, torsional acceleration is the first derivative of speed. Applicant respectfully submits that at least Equation 9 of Creger is non-enabling (see MPEP § 2121)." The Examiner respectfully disagrees with the Applicant's argument. As described in MPEP 2121.01(II), ""Even if a reference discloses an inoperative device, it is prior art for all that it teaches." Beckman Instruments v. LKB Produkter AB, 892 F.2d 1547, 1551, 13 USPQ2d 1301, 1304 (Fed. Cir. 1989). Therefore, "a non-enabling reference may qualify as prior art for the purpose of determining obviousness under 35 U.S.C. 103." Symbol Techs. Inc. v. Opticon Inc., 935 F.2d 1569, 1578, 19 USPQ2d 1241, 1247 (Fed. Cir. 1991)." In other words, even Creger discloses that acceleration is determined by taking the second derivative of speed, equation 9 is still valid and qualified as prior art for the purpose of determining obviousness under 35 U.S.C. 103. Furthermore, as described in MPEP 2163.07(II), "An amendment to correct an obvious error does not constitute new matter where one skilled in the art would not only recognize the existence of error in the specification, but also the appropriate correction. In re Odd, 443 F.2d 1200, 170 USPQ 268 (CCPA 1971)." In other words, an obvious error is correctable as long as one skilled in the art would not only recognize the existence of error in the specification, but also the appropriate correction.

KAMINI SHAH
SUPERVISORY PATENT EXAMINER